

Protest of	)	Date: November 15, 1991
MYCOR SERVICES INCORPORATED	)	
Solicitation No. 089990-91-A-0041	)	P.S. Protest No. 91-57

### DECISION

Mycor Services Incorporated ("Mycor") timely protests the award of a contract for food vending services to Canteen Corporation ("Canteen"). Mycor contends that the contracting officer improperly allowed other offerors to modify their offers after they submitted their original offers, to Mycor's detriment, and challenges the relative evaluation of offers.

Solicitation No. 089990-91-A-0041 was issued on February 25, 1991, by the Northeast Procurement and Material Management Service Center, in Windsor, CT, with an offer due date of March 22. The solicitation sought a full service vending cafeteria and satellite vending machines at one postal facility in Mount Vernon, NY. It also sought vending machines at four other postal facilities in four other cities in New York. The particular items to be vended at each location were listed in attachments to the solicitation. They included candy, cold snacks, hot canned food, cigarettes, hot beverages, and sandwiches.

Section nine of the Solicitation Instructions and Conditions informed offerors that "[a]ward will be made to the responsible offeror whose proposal (price and other factors considered) is most advantageous to the Postal Service." In addition, P.S. Form 7291, "Evaluation Criteria for Food Service Proposals (Cafeteria)", advised that the "criteria listed below will be used in evaluating offers to determine to whom award will be made."

A. Reputation, Experience, and Resources	200
B. Sanitation Practices	150
C. Personnel Staffing and Management	175
D. Menu Prices, Portion Sizes, and Management Controls	175
E. Menu Variety	175
F. Budget, Accounting System, and Controls	125
	1, 000 <sup>1/</sup>

P.S. Form 7289, "Guidelines for Preparation of Food Service Proposal (Cafeteria)," included with the solicitation, required offerors to provide specific information in their proposals for each of the six categories listed in Form 7291. For example, under the

<sup>1/</sup> In Attachment I to the solicitation, the point value of the subfactors within the six evaluation criteria were given. For instance, in Category A, reputation was worth 80 points, experience was worth 80 points and resources was worth 40 points. Similarly, in Category D, menu pricing was worth 100 points, portion sizes was worth 40 points and management controls was worth 35 points.

Section entitled, "Menu Prices, Portion Sizes, and Management Controls," offerors were required to submit a complete price and portion book, including portion sizes and selling prices for all items listed.

Four proposals were received in response to the solicitation. The evaluation committee reviewed the proposals and provided their scores based upon the 1,000 point total. The procurement office performed a separate pricing evaluation after calling offerors to obtain-prices on certain vended items. The scores were as follows:

	<u>Total Evaluated Score</u>	<u>Average Price</u>
Automat	967	\$8.63
Mycor	931	8.61
Canteen	950	8.14
J & S	898	9.47

Canteen's proposal was rated most advantageous to the Postal Service and it was awarded the contract on August 12. Mycor's timely protest was received by this office on August 23.

In its protest, Mycor states that it submitted a price and portion book, in compliance with the solicitation guidelines, with its offer. Mycor advises that it was called by a procurement specialist after the solicitation due date, who requested prices and portion sizes for ten specific vended items. Since that information was already contained in its proposal, Mycor directed the specialist to that information and did not supply anything additional. The protester alleges that the other offerors received similar inquiries, but responded by submitting new information differing from that in their original proposals. Mycor contends that this allowed the other offerors to modify their offers. It states that the phone call alerted the other

offerors to the items important to the Postal Service, allowing them to price those items attractively, while making up the difference on other items. The protester believes this rendered the award defective, adding that any offeror whose proposal was not complete upon submission should have been disqualified.

In addition, Mycor asserts that the procuring officials used only the identified items in making their pricing decision, putting Mycor at a distinct disadvantage in the pricing category since it contends that it did not change its prices for those items while the other offerors did. The protester also complains that even though the solicitation listed the six evaluation criteria and their relative weights, it was told by procurement officials during its debriefing, that award was based upon technical and price factors in equal parts. Mycor argues that such an evaluation conflicts with the stated evaluation criteria, in which price was 17.5% (175 points out of 1,000), not 50%, of the evaluation.

The contracting officer responds, in his report, that a separate pricing evaluation was made on the fifteen vending machine items requested in the solicitation. He states that all the proposals submitted required Clarifications pursuant to Procurement Manual (PM) 4.1.5 a.2,<sup>2/</sup> concerning the identification and verification of brand names, prices, and

<sup>2/</sup> PM 4.1.5 a.2 defines "clarifications as communication with an offeror for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in proposal." The contracting

portion sizes for four items: candy, soda, snacks and sandwiches. Telephone calls were made to all offerors on or about June 25, requesting the specific information needed to perform the price evaluation. The contracting officer reports that no offeror was given the opportunity to change or alter its original proposed prices or submit anything in writing.

The contracting officer indicates, for example, that Mycor provided a range of prices for candy bars, gum and mints, ranging from \$.25 to \$.45. According to the contracting officer, the procurement office needed specific prices for items, not a range, in order to perform its pricing comparison. When Mycor was contacted, it stated that \$.45 was its price for national brands of snacks and referred the specialist to its proposal. Similarly, the contracting officer advises that Mycor's sandwich prices ranged from \$.45 to \$1.65. When called, Mycor advised that its cold sandwiches were \$1.35 and its hot sandwiches were \$1.65.

The contracting officer disputes Mycor's allegation that the procurement office evaluated only ten food items, adding that all fifteen food categories were priced and no one was allowed to change their submitted prices. The contracting officer asserts that the technical evaluation committee evaluated the proposals according to the solicitation requirements. Finally, the contracting officer reports that the stated evaluation criteria were followed when the actual evaluations were performed, but that in the course of debriefing, a misstatement was made to Mycor concerning the weight of the technical and price proposals. The contracting officer states that since Mycor's technical proposal score ranked third out of the four proposals submitted, it would not be considered for award. The contracting officer reports that Canteen, as the technically high and lowest priced offeror, was properly awarded this contract.

Mycor submitted comments on the contracting officer's statement. It reiterates that the contracting officer did not adhere to the point scoring listed in the solicitation. It adds that a closer look at the solicitation reveals that price was only worth 100 of the 175 points in Category D, making price only 10% of the award basis. Mycor contends that the fact that the procuring officials told it, during its debriefing, that price and technical were "equally weighted" proves how uninformed those officials were about their own solicitation. The protester views these comments, even though later retracted, as proof that the evaluations were not conducted in accordance with the solicitation guidelines.

### Discussion

When Solicitation No. 089990-91-A-0041 was issued, Handbook AS-702, entitled "Contracting for Food Service" was in effect.<sup>1/</sup> The handbook states in Sections 321.21 and 321.3 that:

The product of a cafeteria contract must be wholesome food, attractively

officer states that an offer requiring clarification is not disqualified from further consideration from award.

<sup>3/</sup> The solicitation for this requirement was issued on February 25, 1991. A new handbook for food services, Handbook AS-707H, was issued in January, 1991. The new handbook states that it is effective upon receipt. The contracting officer states that it received the new handbook around June or July, 1991, after this solicitation had been issued. Therefore, the former handbook, AS-702, is applicable to this procurement.

displayed, dispensed by courteous personnel, prepared under sanitary conditions, and sold at reasonable prices. To achieve this end, six broad areas of review are used as evaluation criteria and apply to all postal installations. . . . The installation head determines the maximum score for each of the six categories. The importance of the individual area in the total requirement will be the determining factor in the number of points assigned. The total number of points for the six areas is never less than 1,000. [Emphasis in original.]

Further, in Section 441.22, the Handbook states that "[t]he C[ontracting] O[fficer] determines . . . responsibility [and then t]he contract is awarded to the offeror with the highest evaluation point scores."

Mycor alleges that although the point allocation for price was only 100 out of the 1,000 points, the procuring officials improperly gave it greater weight. "It is well settled that when evaluation factors are set out in a solicitation, they must be followed. . . . Once offerors are informed of evaluation criteria, the procuring agency must adhere to those criteria or inform all offerors of any changes made in the evaluation scheme." Serv-O-Matic, P.S. Protest No. 91-32, August 9, 1991. (Citations omitted).

Although the applicable handbook states that food service contracts are to be awarded to the offeror with the highest evaluation point score, that mandate was not followed here. Instead, the procuring officials performed a separate price analysis and made a trade off between the total point score, which supposedly already included price, and an average price they calculated for specified items. Based upon this analysis, they chose Canteen. That was an error.<sup>4/</sup> Award should have been made to the responsible offeror who received the highest point score.

While it is true that we "will not substitute [our] judgment for that of the technical evaluators, nor will we disturb the evaluation unless it is shown to be 'arbitrary or in violation of procurement regulations,'" Sheldon Transfer & Storage Co., P.S. Protest No. 91-08, March 13, 1991, in this instance, it is obvious that the evaluations were arbitrary and inconsistent. For example, some of the evaluators gave offerors scores ranging from 125 to 165 in Category D even though they noted that the offerors had not provided detailed prices. Since price was assigned a subfactor score of 100 of the 175 points, these scores are insupportable. Section 434.12 d. of the Handbook states that the evaluators must "[m]ake no assumptions on matters unspecified or vague in the proposals. . . ." The evaluators acted in an arbitrary

<sup>4/</sup> A further error occurred when the contracting officer orally called offerors to "clarify" their prices, pursuant to PM 4.1.5 a.2. Since this procurement was conducted pursuant to Handbook AS 702, reliance on the Procurement Manual was incorrect. Food Services procurements, conducted pursuant to Handbook AS 702, find their regulatory basis in the Postal Contracting Manual, the procurement regulations which preceded the Procurement Manual. In addition, Section 113.2 of the Handbook specifically explains that the "Postal Contracting Manual (PCM) applies to contracting for food service only to the extent of specific paragraphs cited either in this handbook or on the contract forms."

Regarding clarification, the Handbook states, in Section 436.13, that "[c]larification of proposals may be obtained by a written request, a meeting, or a combination." The Handbook then explains that after a written response or meeting, the evaluation committee members revise their evaluations accordingly and submit them to the contracting officer for final review. See Sections 436.2 - 436.4. Thus, it was erroneous for the contracting officer to ask for clarifications on price orally and to fail to submit that additional information to the committee so that they could revise their scores.

manner when they gave scores for information which they state that an offeror did not provide.

Due to the failure to adhere to the stated evaluation criteria and the arbitrary technical evaluations, the protest is sustained.<sup>5/</sup> The contracting officer is ordered to reevaluate all offers on the basis of the stated evaluation criteria. The current contract may continue until the reevaluation is complete. If another offeror has the highest number of points, the current contract should be terminated for convenience and a new contract issued to the winning offeror. See Illinois Department of Rehabilitation Services, P.S. Protest No. 90-72, October 11, 1991; U.S. Sprint Communications Company, P.S. Protest No. 91-27, July 15, 1991.

The protest is sustained.

**[Signed]**

William J. Jones  
Associate General Counsel  
Office of Contracts and Property Law

**[Compared to original 5/12/95 WJJ]**

<sup>5/</sup> Since the technical evaluations were themselves flawed, all scores were skewed, and Mycor is an interested party with standing to protest even though its evaluation did not place it next in line for award. Compare Cummins-Allison Corporation, On Reconsideration, P.S. Protest No. 91-18, September 16, 1991 with Consultants & Designers Inc., P.S. Protest No. 90-11, May 18, 1990.